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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/790,499

03/01/2004

Clark Schaefer

MMC100

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EXAMINER

TOOMER, CEPHIA D

ART UNIT

PAPER NUMBER

1797

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DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/790,499	Applicant(s) SCHAEFER, CLARK	
	Examiner Cephia D. Toomer	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/2/07; 11/21/07.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 13-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 13-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office action is in response to the amendments filed July 2, 2007 and November 21, 2007 in which claims 1-4, 9, 13-15 and 17-19 were amended and claims 10-12 were canceled.

The rejection of claims 1, 9-13 and 18 under 35 USC 112, second paragraph is withdrawn in view of the amendments to the claim. However, the rejection of claim 7 is maintained for the reasons of record.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 1, 4, 5, 7, 13, 15-19 are rejected under 35 U.S.C. 102(a) as being anticipated by WO 2002046337 with US 20040088912 as the English translation.

WO teaches a solid agent for destroying soot and in particular tars (creosote). The invention chemically cleans combustion devices and flues which are contaminated with the tars (see abstract; paragraphs 1 and 2). The invention also relates to the use of this solid body, which consists in placing it in an active fireplace, preferable in contact with hot embers under combustion conditions.

The solid body is in the form of one or more logs (see paragraph 5). The active agent will be present in the solid body in an amount from 41 to 90% by wt and the

remainder will be composed of 5-50 % wood waste and 5-50% binding agent (see paragraph 16). WO teaches that in addition to the essential constituents the composition may contain colorants, fragrances and the like in up to 50 parts by wt per 100 parts by wt of the base component (see paragraph 17). The active agent may be sodium or potassium chloride , ammonium chloride, sulfate or nitrite and/or ammonium phosphate (see paragraph 19). WO teaches that various constituents of the log are compressed in order to form the log (see paragraph 21). WO teaches that the log is placed on the embers and combusts for approximately 1 hour (see paragraph 30).

Accordingly, WO teaching all the limitations of the claims anticipates the claims.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO 2002046337 with US 20040088912 as the English translation.

WO fails to teach the dimensions of the log. However, no unobviousness is seen in this difference because where the only difference between the prior art and the claims is the recitation of relative dimensions of the claimed log and a log having the claimed relative dimensions would not perform differently than the prior art log, the claimed log is not patentably distinct from the prior art log.

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5. Claims 6, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 2002046337 with US 20040088912 as the English translation in view of Mackowiak (US 4,481,010).

WO has been discussed above. WO fails to teach the use of copper chloride and trisodium phosphate. However, Mackowiak teaches this difference.

Mackowiak teaches a composition for removing creosote comprising 15-60% metallic chloride (sodium and copper) and 20-60% trisodium phosphate (see abstract; col. 4, lines 10-27). The composition is added to a fire (see claim 13).

It would have been obvious to one of ordinary skill in the art to add copper chloride to the composition because WO teaches using sodium chloride as the active tar removing agent and Mackowiak teaches that sodium chloride and copper chloride are art recognized equivalents for this purpose.

It would have been obvious to one of ordinary skill in the art to add trisodium phosphate to the composition because WO uses metallic chlorides and Mackowiak teaches that the addition of the phosphate compound is effective for removing tar (creosote) and reduces the corrosiveness of the chloride compounds.

6. Claims 2 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 2002046337 with US 20040088912 as the English translation further in view of Guilfoyle (US 20040045215).

WO has been discussed above. WO fails to teach the pressure at which compression occurs. However, Guilfoyle teaches this limitations.

Guilfoyle teaches a compressed combustible fuel product wherein in the method of preparing the fuel product the step of compressing the product includes using a pressure of between 35000 kPa to 176,00 kPa (5076-25,527 psi) (see abstract; paragraph 29).

It would have been obvious to one of ordinary skill in the art to apply a pressure between 10,000 psi and 20,000 psi to form the fuel product because Guilfoyle teaches that the skilled artisan would recognize that intense pressure would allow the fuel product to maintain its shape.

Response to Arguments

1. Applicant's arguments have been fully considered but they are not persuasive.

Applicant argues that the prior art teaches away from the present invention because the prior art uses a binder such as paraffin wax. Applicant argues that the present invention does not need or include a binder and that the present invention relies upon intense pressure to form the fuel product.

Applicant's claims do not exclude the presence of a binder because Applicant's claims recite the transition term "comprising". The transitional term "comprising", which is synonymous with "including," "containing," or "characterized by," is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. See, e.g., > Mars Inc. v. H.J. Heinz Co., 377 F.3d 1369, 1376, 71 USPQ2d 1837, 1843 (Fed. Cir. 2004).

With respect to Applicant's argument that the fuel product of the prior art relies upon the binder to keep the shape of the log, it is clear that is not the case because

Guilfoyle uses a binder and he compresses the fuel product at a pressure up to over 25,000 psi.

With respect to Applicant's argument that the present invention solves a problem that the prior art processed logs have not solved, i.e., use of wax as a binder, the examiner is not persuaded. WO teaches that the product of its invention relates to the chemical cleaning of combustion devices and flues which are contaminated by deposits of soots and in particular deposits of tars, with the aim of preventing possible chimney fires. This is also Applicant's objective/ Therefore, the use of wax of a binder does not appear to interfere with this process.

Applicant argues that while both WO and the present invention discloses a log, Applicant argues that the logs of the present invention would perform and combust differently due to the lack of a binder.

Applicant has provided no data to support this argument. The logs of WO and those of the present invention combust for at least one hour and both logs destroy tars (creosote) in chimneys and flues. The examiner fails to see any difference between the logs of the prior art and those of the present invention.

Applicant states that claims 6 and 8 are withdrawn. However, the claims are identified as original claims. Claims 10-12 have been canceled.

2. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cephia D. Toomer whose telephone number is 571-272-1126. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on 571-272-1444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Cephia D. Toomer/
Primary Examiner
Art Unit 1797

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